

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 07-126 (DRD)

[5] XAVIER HERNANDEZ ALBINO,

Defendant.

**ORDER**

On April 12, 2007, the United States filed a motion requesting that defendant [5] Xavier Hernández Albino be ordered to appear for a physical lineup. Docket 51. The government also requested that the name of the government witness not be disclosed by defense counsel to anyone including his client. Id. Defense counsel filed an opposition on April 16, 2007. Docket 62. A reply to the opposition and a motion for reconsideration of the District Judge's referral of this matter to the undersigned was filed the following day. Docket 68.

On April 18, 2007, the Court ordered defendant [5] Xavier Hernández Albino to participate in the physical lineup. Docket 69. The Court subsequently clarified that it had authority to compel the defendant to appear at a lineup in the instant case, but that "separate case lineups" constitute a matter that belongs exclusively to the Grand Jury. Docket 74. In the order compelling the defendant to appear at a lineup in the instant case, however, the Court stated that the referral continued to the undersigned as to the issue of whether or not counsel for the defendant may not inform his client the identity of those identifying him at the lineup. Docket 69. In particular, the order noted "that agents being present or identifying at the lineup procedures does not necessarily mean that they all are

automatically designated as witnesses, as AUSA suggests.” Id.

The government is hereby ordered to inform the Court on or before June 11, 2007, whether the April 18, 2007, physical lineup was conducted and whether defense counsel was informed of the identity of the identifying witness(es) at the post-indictment lineup. Furthermore, the government must inform the Court ex-parte and under seal on or before June 11, 2007, what specific public security concerns would arise as a result of not withholding the identity of the identifying witness(es) at the post-indictment lineup. See generally U.S. v. Tolliver, 569 F.2d 724, 728-729 (2d Cir. 1978).

IT IS SO ORDERED.

San Juan, Puerto Rico, 4<sup>th</sup> day of June of 2007.

s/ Marcos E. López  
MARCOS E. LÓPEZ  
UNITED STATES MAGISTRATE JUDGE